

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

DANIEL SIEGEL	:	APPEAL NO. C-090510
		TRIAL NO. A-090450
and	:	
		<i>JUDGMENT ENTRY.</i>
FRANCIS B. SIEGEL, INDIVIDUALLY	:	
AND AS ADMINISTRATRIX OF THE	:	
ESTATE OF JESSICA ANN SIEGEL,	:	
Plaintiffs-Appellants,	:	
vs.	:	
ANDREW JOEL RINGER, M.D.,	:	
and	:	
MAYFIELD CLINIC & SPINE	:	
INSTITUTE,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiffs-appellants Daniel Siegel and Francis B. Siegel filed a medical claim against defendants-appellees Andrew Joel Ringer and Mayfield Clinic & Spine Institute. Ringer and Mayfield moved to dismiss the claim for lack of an affidavit of merit, as required by Ohio Civ.R. 10(D), and the trial court dismissed the complaint without prejudice. The Siegels appeal that dismissal. We conclude that the trial court's order is not a final, appealable order, and we therefore dismiss the appeal.

In dismissing this appeal, we are guided by *Canady v. Taylor*, where the Tenth Appellate District held that the trial court's dismissal of a medical claim for

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

failure to file a merit affidavit was not a final, appealable order.<sup>2</sup> The court concluded that because the plaintiff could refile his claim within one year of the dismissal, that the dismissal did not constitute a final, appealable order.

We are aware of what appears on its face to be a contradictory holding in *Amadasu v. O'Neal*<sup>3</sup> where we reversed a judgment on the pleadings under Civ.R. 12(C) and the subsequent dismissal with prejudice in favor of the defendant when the plaintiff had failed to file an affidavit of merit. But in the *Amadasu* case the dismissal was one with prejudice, and *Amadasu* is thus distinguishable from this case. We also note that, under the express language of the Revised Code, a dismissal under Civ.R. 10 operates as a failure otherwise than on the merits. Generally a dismissal otherwise than on the merits is not a final, appealable order. As the *Canady* court noted, “a dismissal ‘otherwise than on the merits’ does not prevent a party from refiling because an action that fails otherwise than on the merits may be refiled within one year under R.C. 2305.19, the ‘savings statute.’ ”

We are convinced that this case is more analogous to *Canady* than *Amadasu*—the Siegels’ complaint was dismissed otherwise than on the merits, and they may refile. Consequently we dismiss this appeal for want of a final, appealable order.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on May 26, 2010

per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>2</sup> 10th Dist. No. 07AP-982, 2008-Ohio-2801.

<sup>3</sup> 176 Ohio App.3d 217, 2008-Ohio-1730, 891 N.E.2d 802.